

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES G. SHERWOOD,

Plaintiff,

AMENDED
DECISION AND ORDER

05-CV-6154L

V.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

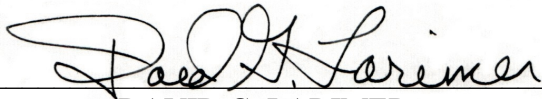
On April 4, 2005, plaintiff James G. Sherwood (“plaintiff”) commenced this action pursuant to 42 U.S.C. § 405(g) to review the final determination of the Commissioner of Social Security (“the Commissioner”) that plaintiff is not disabled under the Social Security Act. Plaintiff now moves to remand the case to the Commissioner for a hearing *de novo* or, in the alternative, for an extension of time for the parties to file motions to determine the matter. (Dkt. #9).

The reason for application is the fact that the administrative record filed by the Commissioner does not contain a full transcript of the hearing before the Administrative Law Judge (“ALJ”). Apparently, the majority of plaintiff’s testimony is simply missing and the transcript contains a notation that the first cassette tape was blank. Plaintiff’s counsel attributes this to the fact that a low-quality recording device was used at the hearing, and that the ALJ had difficulties with its operation.

Five months have already passed since the incomplete transcript was filed with the Court. The Court has granted the parties two prior extensions of time to file motions. (Dkts. ## 7, 8).

Plaintiff's motion to remand (Dkt. #9) is granted. This action is remanded to the Commissioner pursuant to sentence six of 42 U.S.C. § 405(g) for further action. The Commissioner has thirty (30) days from entry of this order to file a full and complete transcript of the May 21, 2004 hearing. If no usable transcript from the May 21, 2004 hearing can be produced, the Commissioner is directed to conduct a new hearing *de novo* and issue a new final determination within one-hundred twenty (120) days from entry of this order.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
December 21, 2005.